



POLICE DEPARTMENT

November 7, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Eric Rodriguez
Tax Registry No. 911794
49 Precinct
Disciplinary Case Nos. 2011-5751 & 2012-7176

The above-named member of the Department appeared before me on February 15, 2013, May 2, 2013, and June 18, 2013, charged with the following:

Disciplinary Case No. 2011-5751

1. Said Police Officer Eric Rodriguez, assigned to the Manhattan Court Section, while on-duty, on or about September 14, 2011, in the vicinity of the Manhattan Court Section, in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer failed to safeguard a prisoner, Person A, resulting in the escape of said prisoner.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
P.G. 210-01 PRISONERS GENERAL PROCEDURE

Disciplinary Case No. 2012-7176

1. Police Officer Eric Rodriguez, while assigned to Transit Bureau District 1, on or about October 31, 2010, at the 42nd Street and 6th Avenue Subway Station in New York County, pushed an individual causing said individual to hit his head on the ground.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Guilty in Disciplinary Case No. 2011-5751 and testified in mitigation of the penalty. In Disciplinary Case No. 2012-7176, Respondent entered a plea of Not Guilty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2011-5751

Respondent, having pleaded Guilty, is found Guilty as charged.

Disciplinary Case No. 2012-7176

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Amauris Munoz as its sole witness.

Amauris Munoz

Munoz testified he is a twenty-six year old aspiring actor, who also tutors low-income families in the Bronx and Harlem. Munoz received a theater degree from the City College of New York in 2008, and currently resides in the [REDACTED] area.

On the day in question (October 30, 2010) Munoz was getting ready to celebrate Halloween, and admitted that the evening in question was "... one of my first times celebrating Halloween as an adult." Munoz elaborated that he went to the store Ricky's

to buy face paint and hair spray, prior to traveling to the Manhattan Theatre Club to meet up with his friends and family members. Munoz testified he had “a little sangria” while at the Manhattan Theatre Club, which is located at 55 Street between 6 and 7 avenues. Munoz stated he left the Manhattan Theatre Club “close to 1:00 in the morning” and then proceeded to the Whiskey Trader Tavern (“Tavern”).

The Tavern is down the street from the Manhattan Theatre Club. Munoz recounted that he was present at the Tavern until “4:00 or 5:00 in the morning, until the bar closed.” Munoz admitted while at the bar he had three sangrias and two beers his brother brought for him. After leaving the Tavern, Munoz ended up at a “falafel spot” and proceeded to go to the subway on 42 Street.

Munoz testified he was not sure at what time he got to the subway station, but it was his intention to take the D train to 125 Street in Harlem. Munoz stated when he got to the train station he heard a train leave and thought it was his train. Munoz indicated that he sat on the top of the stairs, where he could see the train and the booth attendant as he waited for the train. Munoz explained he sat on the top of the stairs because “It was Halloween, I didn’t want to stand alone on the platform by myself; so I made sure to sit in a position where I could be seen by the token booth clerk and I could still visualize the train coming into the station.” Munoz indicated that it was Saturday into Sunday morning during this time. Munoz could not specify how long he was waiting for the train, but he approximated he sat on the steps for an hour and a half.

Munoz testified he was approached by two police officers after he had dozed off and that the first thing one of the officers said was, “What the fuck are you doing here?” Munoz admitted he replied, “I’m waiting for the fucking train.” Munoz explained he

replied that way because he felt the officer was harassing him after Munoz had done nothing wrong. Munoz described the two officers who awoke him and indicated that one of the two officers was in the courtroom. Respondent's attorney then stipulated that the man Munoz recognized from the incident was the Respondent. Munoz testified he was never told why he had to leave the station, and even after asking multiple times, "What did I do?" Munoz did not get a response. Munoz elaborated that even at the end of the incident; neither officer replied to Munoz's questioning and told him what he had done.

Munoz testified that both officers approached him at the same time. Munoz added he remembered the more aggressive officer more than the other officer. Munoz indicated that the Respondent was the more aggressive officer during the incident. Munoz stated what happened next was "really disturbing." Munoz elaborated "... the officer requested I leave the station and I respect the law, you know, my brother is a border patrol agent, I pray for him to be safe every single day [.]". Munoz testified he knew arguing with the officers would not "end well" so he complied with their request and told the officers he was going to contact his lawyer. Munoz explained after he had walked up the steps and began walking towards the turnstile area; Respondent informed him, "You're not walking quick enough."

Munoz testified at this point he had his black iPhone out in one of his hands so he could contact his lawyer. Munoz could not remember which hand he had his phone in. Munoz testified he was walking out of the train station when "The officer stated I was not walking quick enough and he assaulted me." Munoz stated that in response to that, the only thing he could have said was, "I'm about to call a lawyer."

Munoz testified that after Respondent told him he was not walking quick enough, and assaulted him, Munoz elaborated: “. . . he [Respondent] literally grabbed and pushed and threw me into the turnstile.” He said his head hit the turnstile several times after being thrown by the Respondent. Munoz testified after hitting the turnstile he was confused and on the floor; during that time he tried to touch his head and call for help with his cell phone.

Munoz testified seconds after hitting the turnstile that “I was picked up and dragged by the [Respondent] and thrown through the emergency door for a second time.” Munoz stated at the time, Respondent’s partner had not exited the turnstiles yet. Munoz added after he was thrown through the emergency door gate, he was dragged some more before Respondent kneeled on his back. Munoz stated that Respondent was the only officer placing him in handcuffs. Munoz elaborated when he went through the gate “. . . I was helpless. . . I was thrown by this huge guy into the ground.” Munoz admitted he could not recall exactly how close he landed to the emergency gate, and that after he was thrown a second time his phone hit the ground. Munoz explained, “I thought I was about to get murdered, I was frightened, praying in my mind. . . I didn’t believe what was happening to me. I just it’s like a nightmare, a complete nightmare.”

Munoz testified he was taken to a precinct located at 59 Street and Columbus Circle and when he left the train station at 42 Street and 6 Avenue he had sustained injuries. Munoz explained that his lip had been lacerated, his chin was split open, two of his frontal teeth were chipped, and he had tremendous lower back pain. Munoz added that he was “bleeding profusely” from his lip and chin. Munoz testified prior to going to

the precinct he received no medical attention. Munoz added when he got to the precinct, "I was placed into a cage where I was bleeding out of my face."

Munoz admitted at some point he was taken to Roosevelt Hospital where he received some medical treatment. Munoz explained he received 7-10 sutures on his lip, two surgeries and multiple steroid injections for his lips, and is currently undergoing psychiatry and counseling. Munoz had an MRI last summer and learned he had a bulging disk as a result of the incident with Respondent. [Department's Exhibit (DX) 1 consists of 6 photographs of Munoz and how he looked the day of the incident.]

Munoz admitted that as a result of the incident he was charged with possession of marijuana, but those charges were dismissed. Furthermore, Munoz has taken legal action against the Respondent as a result of this incident. Munoz said he has not taken any legal action against any other member of the Department prior to or after the incident. Munoz testified this incident has affected his view of police officers. Munoz elaborated "[I]t makes it extremely hard to see the good in any of them. Like, even like, for example, you know, my brother is an officer, his last name is – he's an officer [REDACTED] like the Respondent. It took me three months to even talk to my brother." Munoz added that he felt like he lost some of his innocence, and that he was dehumanized by the incident.

[DX 2 is a compact disc with four video shots provided by the MTA.]

During cross-examination, Munoz testified the incident with the Respondent played a major role in why Munoz was not speaking to his brother. Munoz explained "It's partially a reason why it was hard to speak to my brother, correct, with the affiliation of him being an officer himself and having the same [REDACTED] as the Respondent, psychologically the connection was it was a lot to handle at the time."

Munoz reiterated that the first place he went to the night of the incident was the Manhattan Theatre Club around midnight. Munoz recalled that he had one glass of sangria while there and left the Manhattan Theatre Club around 1:00 a.m. Munoz added he then proceeded to the Tavern, for approximately three hours, where he had three sangrias and two beers. Munoz stated to his best recollection he had six drinks, and that after he left the Tavern he had no more drinks with alcohol.

Munoz testified that at some point that same day two members of the Internal Affairs Bureau asked him questions about the incident, while he was at the 59 Street precinct. Munoz added, "I was answering the questions to the best of my abilities after being assaulted." Munoz admitted that this interview took place the same day of the incident, and that according to the statement he gave investigators at the time, he failed to mention the beers and only told them he had three sangrias. Munoz testified that he was not in a sound mental state at the time of the interview, "I had just and again, this interview, it was done after I had taken medication so again it was very, very hard to answer any questions at the time."

Munoz testified that he did not feel intoxicated that night. Munoz said, "Intoxication is very interpretive." Munoz stated that he did not think he was drunk when confronted by the officers at 8:30 a.m. the next morning. Munoz explained that he had nothing to drink between four o'clock the morning of the incident until the time he was awakened up on the stairwell. Munoz admitted he had gone out to drink in the past and that at the time of the incident it was not his first time doing so. Munoz testified that in regard to an individual feeling less and less of the alcohol affecting their body as time passes "... it usually takes 24 to 48 hours."

Munoz testified that eventually he was taken to a hospital, was treated by doctors, and blood was taken. At approximately 9:40 a.m., Munoz's blood alcohol content was taken and it came back as .183. Munoz had twice the amount of alcohol for a person to be driving intoxicated under New York State law. Munoz was asked how he could explain the contradictory evidence that he said he was not intoxicated at the time, yet his blood alcohol levels indicated he was highly intoxicated. Munoz explained that "It shows that my alcohol level was at a certain level which has been said that to be in that level is intoxicated, but it's interpretative, I argue differently. I was conscious, I knew what was going on, I was not intoxicated." Munoz admitted that when an individual is intoxicated they tend to act differently compared to when they are sober. However, Munoz stated he did not feel that he was behaving in a way in the subway that would be classified as intoxicated. When Munoz was asked directly if he was an alcoholic Munoz said, "No, I'm not." Munoz reiterated that despite his medical records saying he was highly intoxicated he was not behaving in that manner. Munoz explained "[a]gain, the records, show that my alcohol level was at a certain level. Intoxicated can be interpreted by your behavior, my behavior was not such of a drunk intoxicated."

Munoz testified that the doctors at Roosevelt Hospital diagnosed him alcohol intoxicated because, they went off of what the blood tests indicated. Munoz explained that he was acting loudly for another reason. He stated "I remember the records showing, if I may speak, the records show that I was actually yelling for help and I did not want to be left in the same room with this fellow officer because I was in fear of my life." Munoz added that people can handle their alcohol differently, and alcohol may or may not affect behavior, depending on the person. Munoz admitted that some people drink so much that

they fall asleep on stairwells, but insisted that did not happen in his case. Munoz elaborated that falling asleep on stairwells was not something he did frequently. Munoz reiterated that his reason for sitting on the stairwell was "I came into the train station and I heard my train leave; so I positioned myself on the top of the staircase, close to the staircase so the token booth lady can see me as well as me still visualizing the D train. I did not want to be on this platform by myself because it's Halloween and it's New York City and it's dangerous."

Munoz testified when asked if the alcohol he consumed contributed to him falling asleep on the stairwell he replied, "Perhaps it did." Munoz stated the night of this incident was his first time celebrating Halloween in years. Munoz added "... I know Halloween is not a good day to celebrate as I was always taught." Munoz recalled that he grew up in the city and was nervous about riding the subways because they are dangerous. Munoz explained why he sat near the token clerk "So whenever I get the opportunity and I can feel more safe if someone is around me, absolutely, I would do so. I would always do so." Munoz could not remember the exact time he arrived at the train station, but said it could have been around 6:00 a.m. Munoz admitted that he did "[doze] for a few" while at the train station, and Munoz stated his goal was to get uptown on the train and get home. Munoz added if he had seen an uptown D train while resting on the stairs he would have taken one home. However, according to Munoz, he got there and missed the D train, and waited "30 to 40" minutes on the steps before dozing off.

Munoz testified he was awake before the officers approached him, and Munoz stood up to face the officers as a sign of respect. Munoz admitted that "in retrospect" part of the reason he stood up was because he knew sleeping on the staircase was illegal.

Munoz added that he stood as an indication he was being compliant, and had no problem taking an order. Munoz reiterated that his conversation with the Respondent started out with Respondent asking, "What the fuck are you doing?" and Munoz replying "I'm waiting for the fucking train." Munoz admitted he could not recall at what point he started shouting, "What did I do wrong? What did I do wrong?" but Munoz stated when he first said it, he did so without shouting at Respondent. Munoz recalled that he did shout, "What did I do?" only "once or twice" but that was only after he was asked to leave the station by Respondent. Munoz also admitted that at some point he was sleeping on the staircase in the subway station. Munoz testified that after he told the Respondent, "I paid my fare, I don't understand why you're doing this to me;" Respondent replied, "Like, you know what? I'm going to show you who has the authority here." Munoz admitted during this conversation that he began walking down the stairs to the track as he was having the conversation with Respondent. Munoz stated the officers prevented him from leaving the station by not letting him get on the train.

Munoz testified that there was a time when Respondent and the other officer directed Munoz verbally to leave the train station. It was at this point that Munoz asked "What did I do?" Munoz stated that there was a lot of "...undertone language going on there with this dark with the spirits I was reckoning with that morning, you know." According to Munoz, Respondent changed his life around. Munoz elaborated "I was an innocent young person and he just completely took my innocence away. So yeah, it was like this dark spirit, I was and when it was those moments of pauses where he would look at me with this, like, this evilness in his eyes, which I remember his dark eyes [.]" Munoz continued by stating Respondent said "Leave the station now" in a very "harsh"

tone. It was at this point that Munoz began to comply with Respondent, while Munoz was saying he was going to call a lawyer.

Munoz testified that he had his phone out to call someone. However, Munoz stated that perhaps he had his phone out to try and get a picture of Respondent's badge number. Munoz added that Respondent grabbed him while he was trying to leave the train station. According to Munoz, he was diagonally facing the turnstile when Respondent grabbed him. He explained Respondent was at his back or side. Munoz stated that he never put his phone in Respondent's face during the incident. When asked if Munoz had ever walked towards Respondent, while Respondent was standing still, Munoz replied, "I walked towards the turnstile, perhaps your client was in the direction of the turnstile." Munoz was asked the question a second time and replied, "I don't recall." Munoz testified that he was not trying to be aggressive in any way towards Respondent, and made no aggressive moves towards the Respondent.

Munoz testified that he could not recall how far he was from the Respondent, when he was grabbed. Munoz stated "[it] would be a normal distance as two people talking to each other." Munoz admitted he could not recall whether the Respondent had to reach out at arms' length to grab him, or whether Munoz was right up against the Respondent. Munoz added that at this point he did have his phone out. Munoz said he was not trying to walk towards the Respondent, but he was trying to exit the train station through the turnstiles and not the emergency exit door. Munoz explained "[if] you look at the video, you know, what you would see is the officer is so arrogant, he thought in his mind that perhaps I should walk out of the emergency door which is what I think happened; he assumed . . . [and] I think the fact that I was going to come out through the

turnstile, because I don't use the emergency door, I really think that frustrated him even more and that's when he really, really, got agitated." Munoz added "[so] I actually passed the emergency door, if you take a look, and you can see that, that he got flustered and frustrated and he assaulted me."

Munoz testified he could not remember every single detail of the incident, including, where the Respondent may have been standing, or what he may have been doing. Munoz added he did remember being assaulted, he remembered that clearly. Munoz admitted he had not seen the whole video because it was very hard to acquire. Furthermore, Munoz said that it was hard to watch the video "... it's very hard to sit – and, like, sit down and look at the video and relive a moment which I went to therapy, you know, to try to forget[.]" Munoz admitted when first asked that the video footage can be interpreted as Respondent being stationary, and Munoz as the one moving towards the Respondent. However, when asked again Munoz stated "NO, absolutely not. Absolutely not."

Munoz testified that the video of the incident would speak for itself. When asked what, if anything, Munoz said after he went into the turnstile as he got up; Munoz replied "[you] keep asking me what I did after, I was assaulted, there was nothing I could do. I was fearing for my life; I was on the ground." Munoz could not recall whether he said anything or not when he got up. Munoz denied ever saying the words, "Fuck you, racist, I'm going uptown. I pay your salary." Munoz added that he was not concerned that if he was stopped by police they would find out he had a warrant for an open container in the system. Munoz explained "I was not concerned. I wasn't even aware of that error in the system, I wasn't even aware." Munoz testified he only cursed at the police officers that

morning after they had cursed at him, and just that one time. Munoz elaborated that he spoke regular English after he initially cursed in response to them cursing at him, but that angered the Respondent more. Munoz admitted that when he said, “What did I do?” that would be characterized as a shout.

Munoz testified that he did comply with the Respondent’s request to leave the station, and that it is a matter of “. . . interpretation of the video.” Munoz admitted that when he was at the stationhouse, he was yelling and screaming while in the jail cell. Additionally, Munoz conceded that there were moments when he was at the hospital when he was screaming and yelling loudly; but said he was not doing so during his entire stay at the hospital. Munoz recalled that there came a point when doctors chose to [REDACTED] him with [REDACTED]. Munoz stated that he was “tricked” into getting [REDACTED]. Munoz added that he was given the medication without his consent, while he was requesting a new officer to watch him, because Munoz was “scared” for his life. Munoz also requested invisible sutures, because he heard they were better and would mesh with his skin. Munoz elaborated “I didn’t want now I know they did a they think it was an emergency so they stitched me up as an emergency but at the time of the incident I was the victim – I’m a survivor, excuse me, survivor, not a victim.”

Munoz testified that he had nobody on his side. Munoz explained, “I had these officers that just assaulted me, beat me up, his – the other guy said, when I asked – you know what? I did say one thing to him, ‘why did you allow him to do that?’ And the officer said, ‘I didn’t see anything. I did see you trip. I did see you trip.’” Munoz admitted that he was screaming for a lawyer while at the hospital. When asked if by

calling himself a “survivor” Munoz implied the Respondent was trying to kill him, Munoz replied “Absolutely, he tried to.” Munoz was asked a second time after an objection if Munoz was calling himself a survivor because he felt the Respondent was trying to kill him, Munoz replied “No.” Munoz was asked a third and final time if he felt the Respondent was trying to kill him during the day in question, Munoz explained “[by] the way I was treated, absolutely. I could have died that morning. Yes, I could have died that morning. My neck could have been cracked, absolutely. The way the way he treated me was like as a person that didn’t matter.”

Munoz testified that since this incident he has attended [REDACTED] and has gone to see a [REDACTED] Munoz stated he has been to [REDACTED] over twenty times, and has seen a [REDACTED] approximately seven or eight times. Munoz revealed he had been diagnosed with [REDACTED] as a result of this incident. Munoz added that he is presently taking prescribed drugs based on the [REDACTED] he has received. Munoz could not recall all of the names of the medication, but stated he had been on [REDACTED] and is currently taking [REDACTED] Munoz said that he does go to physical therapy, and because his insurance has kicked in, he will continue to go a few times a week.

Munoz admitted that he filed a lawsuit against both the Respondent and the City of New York based on the incident. Munoz elaborated that his attorney drafted papers claiming Munoz was “. . . viciously attacked, wrongly detained, arrested and falsely imprisoned [.]” Munoz’s lawyer also claimed that Munoz suffered “. . . loss of liberty and life, suffered emotional and mental and psychological pain and otherwise injury [.]”

Munoz testified he sustained internal injuries as a result of the incident. Munoz explained “We can – we can speak about the internal injuries which you can’t – you can’t even imagine how hard it is, and what I feel inside, the pain, the agony, the suffering, the humiliation, the [REDACTED] It just doesn’t go anywhere, it just gets worse and worse [.]”

Munoz added he sustained physical injuries as a result of the incident with the Respondent. Munoz said he has had two surgeries so far on his lips, several steroid injections, and pain on the right side of his body from the shoulder to the back and down to the knee. Munoz stated he had an MRI done, which revealed he had displaced a disc in his lower back. Munoz explained he had recently received an epidural injection for the injury due to chronic pain. Munoz was asked if he was in pain as he was giving testimony, to which he replied, “Yes, I am.”

Munoz testified that he is self-employed and works as an actor, teacher, and an independent contractor. Munoz admitted that he did not have a “9:00 to 5:00” job he went to everyday during the time the incident took place. Munoz added, he had done background work in the past, but was going out for “big jobs” during the time of the incident. Munoz explained “. . . I had just finished college two years ago. My career was actually beginning to pick up. I had representation at the time. Representation would be an agent; a manager would send you out for these jobs, casting available.” Munoz stated this incident has turned his life around, because he lost his manager after the incident, and his life since has not been the same. Munoz admitted that the lawsuit he filed included a loss of wages claim. Munoz stated he was part of a movie entitled, “Peanut Butter and Jelly” made in 2013. Munoz admitted that the filming for the short movie was done in 2012, after the incident with Respondent took place. Munoz was asked how he got this

role despite the accusation that the incident with Respondent “ruined” him. Munoz replied “That’s incorrect, because the character I was playing is a guy from the streets so having a scar, I had braids, if you look at the film; so having scars and stuff actually adds more to that type of character. Unfortunately, that’s not the type of character I was going for prior to the incident. So I remained – and I remain saying yes, it did affect my wages and my lifestyle and where my career was heading.”

Munoz testified as a result of his lawsuit against Respondent and the City of New York there was a mediation held. Munoz stated that he initially demanded a settlement of four-hundred thousand dollars, based on the advice Munoz received from his lawyer. Munoz explained “Yes, I trusted the lawyer that he has knowledge of what’s going on.” Munoz added “It’s my understanding that I would actually like to go to trial with this, it would be in my best interest.”

Munoz reiterated that he majored in theater while in college, and has studied acting. Munoz was asked if he considers himself good at what he does, which Munoz replied, “Yes.” Munoz stated that if he was asked to look sad, destroyed, or devastated he could do so at the drop of a dime. Munoz explained, “I wouldn’t say at the drop of a dime, because it’s a very – it’s not as easy as you think, it’s actually very emotional and sometimes you have to use some real life situations to go into these deep dark places. So not necessarily, it’s not at the drop of a dime. The work is actually way harder than it appears to be.” When Munoz was asked if he had to prepare, Munoz replied “Prepare preparation is key.” Munoz admitted that he did not prepare for his testimony. He stated “[this] was something I didn’t want to think about too much.”

Munoz testified he was acting like a gentleman during his testimony, and was only cursing and yelling at the cops during the incident, because they were yelling and cursing at him. Munoz admitted that he in retrospect should not have yelled at the officers. Although, Munoz added that even if he did yell and curse that did not warrant being assaulted. Munoz denied that during the incident he came at Respondent.

During redirect examination, Munoz testified that after the three-month period he had a better relationship with his brother. Munoz admitted that the relationship after the three-month period was awkward, that it eventually got better. Munoz added that currently he does speak to his brother, and his brother even gave Munoz advice on what to do.

Munoz testified that besides sleeping he was not behaving in any other manner prior to the police arriving. Munoz added that he did not interact with any of the other individuals at the train station that day, and was not yelling in any way prior to the officers arriving. Munoz testified after the officers arrived he said "What did I do?" approximately two or three times. Munoz added that while he was talking to Respondent, a train came on the D train line, Munoz stated he was not able to board the train because he was stopped by the officers. Munoz could not exactly recall at what point he tried to call his lawyer. He stated everything happened quickly, but that he recalled saying "Hey, I'm going to call my lawyer" as he was walking to leave, and immediately prior to being assaulted.

Munoz testified he attempted to take a picture of Respondent's badge number so he could file a report against him. Munoz said at no point did he try to take a picture of anything other than Respondent's badge, and that Respondent had stopped him from

taking the picture. Munoz testified at no point did Respondent put his hands on Munoz's arm to guide or walk him out of the station. Munoz added that the Respondent's partner was "10 to 12" feet away, when Munoz was walking out of the station. Munoz stated he was following Respondent's orders and walking out of the station prior to the "attack."

Munoz testified that by the time Internal Affairs interviewed him at the hospital, he had already been given medication and was in his words "definitely not coherent at the time." Munoz elaborated, "I still felt a little bit woozy from the medication that they had gave me at [REDACTED] Hospital. My lip was – my lip was swollen. I had I had got hit in the head, so I had like a excruciating headache, like, I was just in a lot of pain at the time. And I was tired, I hadn't gotten a chance to sleep, I had been out from the morning before . . . I didn't get a chance to rest my body." Munoz added that he was falling asleep during the interview and had been up for approximately thirty-six hours.

Munoz reiterated that he did not make any aggressive gestures towards Respondent. Munoz said besides yelling "What did I do wrong?" Munoz did not yell during his conversation with the Respondent. Munoz added that while he was at the train station he was not stumbling in any way.

Munoz testified that prior to the incident with Respondent, his acting career was improving. He was receiving principal acting roles at the time in commercials. Munoz explained, "Principal work is when you're on a scale over, let's say, \$700, \$800 for eight hours. If you make the cut, you get residuals." Munoz compared principal work to background work, which was the work he had been getting since the incident. Munoz elaborated, "Background work is background work. You know, you're an extra in the back of a shot, you get paid \$150 bucks for a day, maybe you make some overtime that

day." Munoz continued by stating he had an agent at the time of the incident, and was receiving offers for work. He added he had just done a Starbucks commercial as principal work. Munoz testified in regards to his change in his situation "Now I have to do – to make the money I was making then, I have to work three months to make what I was making, let's say, in one week. So it changes the industry a lot from doing background work and principal work."

Munoz testified that the reason his acting career declined was because his face was severely damaged. Munoz explained how his career was affected "You know, my manager dropped me in the sense that he could not send me out because I was not physically prepared to go out into an audition for, let's say, my dream, a Colgate commercial, which I missed an audition during that process – during that happened to me because I was physically not ready." Munoz added that he could not tutor for a while after the incident because of psychological problems. Munoz said he couldn't tutor because "I cannot come into these homes where these kids are in need. And they look forward to seeing me with a bright face and come in and give them a good class. I can't put up my face anymore."

Munoz repeated his previous testimony, stating he had two surgeries on the lip and approximately six keloid injections. Munoz stated he will require further surgery, although he does not know how many more procedures will be necessary. Munoz said the doctors are generally working towards trying to gradually reduce the keloid, and that the last keloid injection Munoz received was in October of 2012.

Upon further questioning by the Court, Munoz testified he had make-up on and dyed his hair on the day in question. Munoz explained that he had grayish shoulder

length hair that was blown out, and he had white paint on his face. Munoz admitted that he was definitely in costume during the time of the incident. Munoz added that he weighed approximately one-hundred and fifty five pounds on the day of the incident.

During redirect examination, Munoz was shown DX 1 and was allowed to review the sets of photos. Munoz confirmed that he was wearing white paint on his face and had spray on his hair. Upon further review of the photos, Munoz said that his lips and chin were in no way obstructed by the white paint he had on his face. Munoz admitted that the face make-up he had on originally at the start of his evening was heavy, but it got lighter as the evening progressed.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent testified he has been working for the Department for approximately twenty years, and has no prior disciplinary history. During that time Respondent has worked at two commands: Transit District 2 and Transit District 1. Respondent stated during his career he has typically worked either regular patrol or as a plainclothes officer. He dealt with high schools and gang activity in those areas, and has made approximately two hundred or more arrests.

Respondent testified that in regard to the case involving the prisoner, he was assigned to Manhattan Central Booking. Respondent stated he was supposed to be doing prisoner transports and when he was switched to midnights at the court system, he was

instructed by supervision and other officers how things are done differently. Respondent added that things are done differently because the officers have to do meal relief once the prisoners are lodged. Respondent elaborated what his trained procedure was: "And so the way I was taught to do it was unless there was a prisoner that posed some sort of threat or whatever, one transporter would take the second call of prisoners down which were the ones that didn't get to see the judge that night, and the other transporter would take down the commits who were going to be turned over to corrections."

Respondent testified that on the night of the incident he transported twelve second calls to their lodging, and then he proceeded to his meal relief post: prisoner intake. Respondent stated that he was at his meal relief post for over twenty minutes, when the sergeant came and asked him where the other transporter was. Respondent replied that he did not know, but the other transporter had seven individuals to transport: two females, and five males. Respondent explained that the other officer was supposed to transfer prisoners from the court, down to the holding pens or to the Corrections commit area. Respondent was then instructed by the sergeant to look for the other officer, while the sergeant stayed at Respondent's meal relief post.

Respondent then went to look for the other transporter, and found him with the prisoners at the male commit area, next to the gate for Corrections. Respondent explained how he understood the procedure, "Because their procedure is, when you bring in prisoners you hand them all the paperwork first, they review the paperwork, and they take one prisoner at a time." Respondent continued elaborating, "So I saw four male bodies, I assumed that they had already started taking in the male prisoners because the door was already opened. So I explained to the officer, 'Listen, the sergeant is looking for

you because, you know, he's supposed to be on another post.”” Respondent told the other officer he would watch the four male prisoners, while the other officer lodged the female prisoners. Respondent waited as the Corrections officers took the other four males in one at a time. When the Corrections officers finished, he approached the Respondent and said, “Listen, your partner gave us five sets of paperwork and only four bodies.” Respondent reviewed the paperwork given to him by the Corrections officer and stated he recognized the prisoner as an individual deemed a “special.” Respondent explained that a special means an emotionally disturbed person. Respondent elaborated that because this prisoner was a special he would not be in the regular holding cells upstairs behind the courtroom, but would instead be seated during the court proceedings on the prisoner bench.

Respondent testified after receiving this information that he went back to the felony courtroom to see if the prisoner had been left behind by mistake. When the Respondent got to the courtroom he saw it was closed, and proceeded to ask the Corrections officers, who guard the prisoners in that area, if there was anybody left in the courtroom or cells. The courtroom guards informed Respondent that there was nobody left inside and that the prisoner in question had left with the other officer. Respondent elaborated on what the guard told him ““Yeah, he went down with your partner. He was the last guy in the line because he was limping and I closed the door behind him, so he has to be downstairs.”” Respondent then double-checked with the Corrections officers near the commit area and after confirming the prisoner was not there, Respondent informed the sergeant. According to Respondent, the sergeant then directed him to stay

at his meal relief post, while the sergeant and other officers tried to find out what happened.

Respondent stated that the sergeant and the other officers searched the entire building in an attempt to locate the prisoner, but the prisoner was not found in the building. Respondent admitted that after this incident he was suspended for fourteen days without pay.

Respondent testified that his assignment during the second incident on the morning of October 31, 2010 was to ride a train between 53 and Lexington into Queens. Despite the station being closed, the sergeant assigned Respondent to sit on the station anyway. Respondent stated he was going to be driven in a patrol car by Officer Farrell to his assigned post. Respondent admitted that while they were on their way to the Respondent's assignment, Farrell received a call regarding a "male intoxicated at 42 Street and Sixth Avenue, Station Booth Nancy, 503." Respondent added that when Farrell asked if Respondent minded if they respond to the job because it was still Farrell's obligation to do so, Respondent replied "sure, no problem." Respondent approximated that the incident took place at 8:30 a.m. on Sunday.

Respondent testified when he and Farrell arrived at the train station they proceeded to the booth clerk. Farrell was the one who talked with the booth clerk. Respondent summarized their conversation stating that "'There's a drunk guy on the stairs and a lot of people keep telling me about how he's been there for a while and some people are saying that he's bothering them.'" Respondent was let through the service gate by the booth clerk and eventually located Munoz to their immediate left, halfway down the staircase. Respondent stated when he first saw Munoz, Munoz was sitting

against the left side of the rail and looked like he was sleeping. Respondent added that Farrell approached Munoz first, as Respondent was off to Munoz's side leaning against the opposite handrail. Respondent said as he and Farrell moved towards Munoz, all three of them were located on the stairs.

Respondent testified that Farrell approached Munoz and proceeded to get his attention. Respondent explained how Farrell got Munoz's attention "Well, Officer Farrell tapped him on the shoulder to get his attention and he kind of like opened his eyes and looked up and Officer Farrell asked him if he was okay, and he goes, 'Yeah, I'm fine. Why?' He goes, 'Oh, you know, you're sleeping on the stairs. We got a couple of calls. Are you ok? You've been drinking a little bit.'" According to Respondent, Farrell informed Munoz that they were going to wait with Munoz as he waited for the train. At that point Munoz replied, "What's the problem? I graduated summa cum laude." Respondent stated that at some point a train came into the station, but Munoz refused, because he replied that particular train was not the one he was waiting for. Respondent explained that Munoz appeared agitated, and that Munoz asked the officers what was the problem, what was he doing wrong. According to Respondent, Farrell then informed Munoz they would like Munoz to get on the train and go home.

Respondent testified that he could smell the liquor on Munoz, and inferred from that that Munoz was intoxicated. Respondent continued by saying Munoz's speech was slurred and his eyes were very bloodshot. Respondent admitted that the initial conversation Farrell and Munoz had was not that loud. However, Respondent said after a second train pulled into the station and Munoz refused to get on, the conversational tone escalated. Respondent stated Munoz replied to his request by saying "Oh, I'm not getting

on that train. Fuck that, I don't have to do anything." According to Respondent, after Munoz became more disruptive, Farrell proceeded to walk up the stairs leaving Respondent with Munoz.

Respondent testified after Farrell walked up the stairs, Respondent stayed behind next to Munoz, to make sure Munoz either got on the train or left the station. At that point Munoz turned his attention to Respondent and continued to ask Respondent, "What the [fuck] is the problem? What did I do?" Respondent reiterated to Munoz that it was Farrell's only intention to get Munoz to leave the station by taking the train. At that point, the Respondent recommended Munoz go upstairs and take a taxi home. After Respondent made that recommendation he proceeded to grab Munoz on the arm, to help walk him up the stairs, and out of the train station. Munoz pulled away from Respondent and at that point Respondent spoke to Munoz. Respondent stated to Munoz "Look, we're on the stairs, I'm not trying to go down these stairs with you and I don't want you to fall down the stairs. I'm going to walk you up to the top of the stairs and let you go and you're going to exit the system. We'll go upstairs and you can catch a cab or whatever but you're not going to take the train right now in this condition."

Respondent testified that during his career in Transit he has had to remove individuals from the station using the stairs, based on their intoxication levels and behavior. Respondent added that individuals who are intoxicated or under the influence of drugs, are prone to violence more than people who are sober. Respondent added that he has been attacked by people who were heavily intoxicated or high on drugs. Respondent described the difficulty of trying to remove someone from the station "Well, you have to be very careful of what's going on because by the time – first of all, I want to

be safe; and second of all, I have to make sure that nothing happens to him. I can't just, you know, grab someone or let them lose balance on those stairs because I have to ensure that they're okay, too."

Respondent reiterated that Munoz pulled away from him after Respondent tried at first to get a hold of him. It was at that point that Respondent tried to explain to Munoz why he was grabbing his arm, and after that they both proceeded to walk towards the top of the staircase. Respondent admitted at that point Munoz took his phone out. Respondent said he was not bothered by Munoz having his phone out and even said it was a part of everyday life as an officer. Respondent said, "Yeah, people are always taking pictures and stuff like that, and recording or whatever." Respondent stated that as Munoz was walking up the stairs he was verbally complaining "Get off me. Why are you doing this to me? What did I do?" Respondent admitted that while he was helping Munoz up the steps there may have been other people noticing and looking at them. Respondent explained that he is sure they heard the interaction going on, but Respondent was not paying attention to them as he was walking up the stairs.

Respondent testified that when he and Munoz reached the top of the stairwell, Respondent let go of Munoz's arm and began to walk in front of him. According to Respondent, he then faced Munoz and pointed towards the exit directing him to leave the station. Respondent said he directed Munoz out stating "Look, like I said, go upstairs, get some air or catch a cab or whatever you gotta do to go home." Respondent at that point told the court where he was relative to Munoz's position, and stated that he was directly facing Munoz, when Respondent directed him towards the exit to leave. Respondent stated that the turnstiles were to his left, and that he kept his left hand

perpendicular to his body directing Munoz to leave the station. Respondent clarified that he kept a few feet of distance between himself and Munoz. Respondent explained why he kept his distance “Yes. I like to maintain a certain area of space in front of me, it gives me time to react if anything happens; and also it’s personal space, not just for me, but also for whoever I’m talking to.” According to Respondent, neither he, nor any other individual, in any way obstructed Munoz from getting to the turnstiles.

Respondent testified that after Munoz was directed to leave he did not verbally comply; instead, Munoz raised his phone and was pointing it at Respondent’s chest and face. Respondent stated unequivocally that he did not make any movement towards Munoz as he was directing Munoz to leave the station. Respondent explained that Munoz came at him at an angle opposite of the exit, while Munoz was holding his phone towards his face. Respondent added that Munoz’s right hand was free while his left-hand held the cell phone. Respondent at that moment in time had his firearm on his left hand side because he is left-handed, and Respondent instinctually moved his firearm away from Munoz as Respondent saw Munoz approaching him. Respondent reiterated that he was already on alert because of Munoz’s behavior and Respondent’s prior experience.

Respondent testified that there came a point when Munoz was within two inches of him and at that point Respondent stated, “Well, at that point he got right on me like this, so I grabbed him and I tossed him to my left.” Respondent added that when he tossed Munoz to his left, Munoz still had his phone in his left hand pointed at Respondent. Respondent clarified that as Munoz approached him with his phone, Munoz made some sort of motion with his right hand towards his jacket. Respondent admitted that he could not see exactly what Munoz was trying to do, because Munoz was already

very close to him. Respondent explained that when Munoz was inches away from him he reacted “Well, what I’ve been trained to do; if anyone approaches you in that manner, the first thing you have to do is get them away from you, so I grabbed him and tossed him towards the left.” Respondent admitted that he has typically used a double-handed push to the chest straight back to create space for Respondent’s personal safety. Respondent said he could not use the double-handed push in this instance, because Munoz was coming at an angle and his back was to the stairs. Respondent determined that pushing him straight back may have led Munoz to stumble and fall down the stairs.

Respondent reiterated that he has spent his entire career working in transit, and has to be aware of all the hazards possible when trying to create space with someone. Respondent added that stairs or a staircase were included as possible hazards. Respondent stated that it was his intent just to get Munoz away and create space. Respondent explained after he tossed Munoz to his left, Munoz struck the turnstile and slid down to the floor. Respondent said he did not intend for Munoz’s body to strike the turnstile when Respondent tossed him to the side.

Respondent testified that after Munoz hit the turnstile and fell down, he approached Munoz and grabbed him from behind underneath Munoz’s arms and dragged him out through the gate. Respondent added that he heard Munoz utter something similar to “. . . [fucking] me up” or “what the [fuck]” but he could not be sure. Respondent said he felt threatened, “Yes; I take him coming towards me after the interaction that had been going on for the past couple of minutes as a threat.” When asked if Respondent made any decision whether to arrest Munoz or not, Respondent explained “No. Once he approached me and I had to toss him to the side, that’s an arrest. The second I have to put

my hands on someone that way to defend myself or whatever, that's an automatic arrest."

Respondent elaborated on how he approached Munoz and what transpired after Munoz hit the turnstile and fell to the ground. Respondent said "I came behind him because he was still on the floor, he was trying to get up but I grabbed him underneath the armpits, and I dragged him out, like if you're dragging somebody that's limp out of a building or whatever."

Respondent testified he backed Munoz through the emergency gate. Respondent said he backed up straight with Munoz and once they cleared the gate Respondent tossed Munoz to the side. Respondent stated at no point did Farrell assist him during the confrontation. Respondent said after he tossed Munoz to the floor Munoz attempted to crawl away. Respondent elaborated "At that point I was going to bend down to try and cuff him but he was trying to crawl off and he ended up crawling around the bend because the gate's there. I was facing the gate, but it's like, this is the exit gate, it opens out this way and then there's a gate like this and it goes in an L shape and he had crawled around to the bend at that point. So I followed him, you know, I shimmied along following him to that side."

Respondent testified at that point he knelt down to handcuff Munoz but was unable to. Respondent added at one point Munoz was standing up again and Respondent grabbed him and hip tossed him back to the floor. Respondent said at that point Munoz had landed on his side so Respondent turned him onto his stomach and handcuffed him. Respondent said prior to Munoz standing up and being tossed again, it was Respondent's intention to handcuff Munoz. Respondent said that Munoz did not comply with Respondent's attempt to handcuff him and instead, Munoz tried to resist. It is at that

point Respondent used a suppression technique he learned in the academy. Respondent explained, "For a few seconds he tried to keep [his hands] underneath which is something that people usually do. At that point I do something that they taught me at the academy which is like a shin-ear suppression, that if the person is on the floor laying face down and their head is turned to one side, you put pressure with your shin on their ear and it prevents them from being able to turn anymore because now you're holding them from that."

Respondent testified that he only applied enough pressure using the shin-ear suppression to keep Munoz stable and have Munoz comply with being handcuffed. Respondent said once Munoz removed his hands from underneath he proceeded to handcuff Munoz. Respondent stated the first time he tried to handcuff Munoz he stood up, and that was when the Respondent took him down and applied the shin-ear suppression.

Respondent testified once Munoz was handcuffed he noticed that Munoz was injured. Respondent noticed that Munoz was bleeding from his lip but could not recall when Munoz sustained it during the altercation. Respondent then stood Munoz up and Munoz began to yell. Respondent told the court Munoz said "What did I do? Look what he did to me." Respondent admitted that Munoz was bleeding heavily and that Munoz's bottom lip was split. Respondent added that as he and Munoz were walking up the stairs whenever Munoz saw someone he would yell, "Oh, look what they did to me. Help me. Don't let them do this to me."

Respondent testified after he got Munoz up the stairs he tried to search him before placing him in the RMP (Radio Motor Patrol). Respondent stated Munoz tried to turn his

body in an attempt to avoid being searched, and Munoz was trying to get the attention of people passing by. Respondent said he was following basic procedure by trying to perform a preliminary search of Munoz prior to placing him in the RMP. Respondent admitted that when he was able to search Munoz he found a small bag of marijuana in one of Munoz's pockets.

Respondent testified that after Munoz was searched he was placed in the RMP for transport. It was Respondent's intention to take him to Transit District 1, but before they could leave Munoz was yelling, which caused people to congregate. Respondent noticed people starting to gather due to Munoz's yelling and redirected EMS to the command, where Munoz could receive treatment without the commotion. Respondent stated that as he was going back to the command he noticed there was filming going on and Central Park West was closed off. Respondent said Farrell was driving the RMP and at some point Farrell pulled over and Respondent removed Munoz from the RMP. According to Respondent, Farrell pulled over a block away from the entrance to the command located on Broadway. At that point Respondent by himself proceeded to escort Munoz down the block towards the entrance to the station. Respondent explained that Munoz began yelling again like outside the train station saying, "Help me. Look at what they're doing to me. Don't let them do this to me." Respondent added that Munoz was trying to sit on the sidewalk and did not comply with Respondent's commands to go into the command to receive treatment.

Respondent testified that he eventually got Munoz into the command. At that point Respondent began processing Munoz, acquiring Munoz's pedigree information and placed Munoz in a cell. Respondent said EMS eventually arrived and that Munoz was

being loud, belligerent, and complaining, which made EMS's job more difficult.

Respondent added that one of the EMS technicians told Munoz, "Listen, if you keep screaming and yelling like that, you're going to open up your lip more."

Eventually Respondent rode with Munoz in an ambulance to [REDACTED] Hospital. Respondent stated he felt like it was his responsibility to accompany Munoz because Munoz was his prisoner. Respondent was able to observe Munoz as Munoz was being treated by the hospital staff, and Respondent said that Munoz was making a scene. Respondent explained Munoz's behavior "He was making a scene and yelling and screaming and like snarling any time he looked at me, and one of the doctors there told him the same thing that the EMS told him 'Listen, you're going to make that injury worse.'"

Respondent admitted at one point one of the doctors asked him if Munoz was on any other substance besides alcohol. Respondent said besides being intoxicated from alcohol he could not say whether Munoz was on another substance. According to Respondent, at one point the doctor asked Munoz "What else are you on, because this is just a little too excessive." Respondent stated eventually as far as he could tell Munoz was treated at the hospital.

Respondent conceded that he was relieved from the hospital by the patrol supervisor Sergeant Coleman, when he saw that Munoz was making more of a commotion with Respondent around. Respondent said when he got back to the command he finished the paperwork for the arrest.

Respondent testified that he was brought in by the District Attorney (DA) to discuss what charges Respondent arrested Munoz for. Respondent said he charged

Munoz with disorderly conduct and possession of marijuana. Respondent admitted he was brought into the complaint room, but never brought in for a trial or to testify. Respondent said he was never consulted prior to the case being dismissed. Respondent conceded he was served with papers and sued civilly in criminal court with regard to this matter.

During cross-examination, Respondent testified that on September 14, 2011, he was assigned to the Manhattan Court Section. Respondent admitted that he had that assignment because he had been modified after being served with charges regarding this case. Respondent stated he had been assigned to Manhattan Court Section prior to the incident on September 14, 2011, for approximately nine months. Respondent said while at Manhattan Court Section ninety-five percent of the time he did prisoner transports. Respondent recalled that his post PT 1 was prisoner transport, where he escorted prisoners back and forth between the courtroom and down to holding. Respondent said Officer Bullard was his partner on the day in question. Respondent could not recall how many prisoners he transported during the nine month period he was assigned there.

Respondent testified that he did receive training on how to specifically deal with prisoner transports after the academy. Respondent testified that regarding prisoner transports, he received different training for day tours and for midnights. Respondent said during day tours there would usually be two transporters taking a set of prisoners, but on midnights he was taught differently. Respondent admitted that on the night of September 14, 2011, he was working midnights.

Respondent clarified that during midnight tours there were always two sets of prisoners. The first group was the second calls, who were the prisoners who did not get

to see the judge. The second group was the commits, who were going to be turned over to corrections for processing. Respondent explained the difference in the procedure “Normally the normal procedure would be that two transporters would take one set of prisoners; however, on the midnights they had a procedure that we had to do meal reliefs after the court went down and after we transported prisoners. So I was always told trained by officers and the supervisors were aware or whatever the case was, but unless there was some sort of problem with a prisoner that was going to get in, like, trouble or be a issue, we were told that one transporter would take the second calls and the other transporter would take the commits. We would lodge our prisoners and then go to our respective meal relief posts.” Respondent admitted that if he had a problem prisoner he would have followed normal daytime procedures. Respondent hypothesized that procedures were changed during midnight hours to save time and provide meal relief for other officers.

Respondent testified that he could not remember if he received a Manhattan Court Section orientation booklet when he was first assigned to the post. Respondent said he typically used daisy chains, unless the daisy chains were not available, in which case he always had handcuffs. Respondent added he carried two pairs of handcuffs with him, but admitted that was never enough for the number of prisoners he had to transport. Respondent could not remember how many prisoners he had on the day in question, but he was confident he had more than eight second-call prisoners to transport. Respondent elaborated on where he was transporting the prisoners, “From the holding pens in behind the felony courtroom down to Corrections to the regular lodging because they had to be brought back up in the morning to see the Court.” Respondent said that the walk

from the holding pens behind the felony courtroom, to the Department of Corrections Section took approximately three minutes non-stop.

Respondent testified that on the day in question he did not have a partner with him to help transport the second calls. He explained that there are three hallways in between the felony courtroom and the Department of Corrections Section. There are no court personnel or Corrections officers posted along the way. Respondent explained that Corrections officers are upstairs in the holding pen, and there is an intake area, where the sergeant usually stands as the guards walk the prisoners by. Respondent admitted that as the prisoners are taken between the three hallways towards the Department of Corrections Section, they have no other supervision, besides the officers escorting them.

Respondent said to the best of his knowledge Bullard had eight commits to transport on the day in question. Respondent stated that he is usually in the courtroom as the prisoners are being processed, prior to them being transported, unless Respondent is called away for another reason. He added on the day in question he was in the courtroom during the prisoners' processing. He had a prisoner who was characterized as a "special." He explained that a "special" is usually an emotionally disturbed person. Respondent admitted that the special prisoner did not exhibit any violent behavior, and said the special prisoner was calm during the whole proceeding. Respondent recalled that this special was sitting in the courtroom on one of the benches and not handcuffed. According to Respondent, special prisoners are never placed in holding cells with other prisoners. It is standard procedure to keep them separated from other prisoners, because they may react violently or have a problem with the other prisoners.

Respondent testified that on the day in question, none of the prisoners were in handcuffs or daisy chains. He explained that the daisy chains were kept in a crate downstairs; however, Narcotics occasionally borrowed the chains, and on the day in question the chains were not available. Respondent added that he did not handcuff the prisoners because he only had two sets of handcuffs on his person, for approximately twelve prisoners he was transporting that day. Instead he had the prisoners walk in line formation, and he followed them from behind. Respondent stated that if he had a prisoner that he thought was going to be a problem, he would have made other arrangements, but the prisoners were all compliant.

Respondent admitted that there were other court officers in the courtroom, and the courtroom itself was located in a courthouse. Respondent stated that the Department of Correction's officers were also present in the courtroom at the time, and they all had handcuffs on them. Respondent conceded that he could have asked those other officers for assistance with handcuffing the other prisoners, however, he said he had never previously done that.

Respondent clarified when asked if the sergeant was in the commit area, that there was a police officer at the intake area. Respondent explained, "Basically in the commit area, when we come down from the felony courtroom and we walk down the first long hallway we actually, walk past the commit area. Then we walk to the end and make a left. At the end of that second hallway is the intake area where there's a police officer posted." Respondent added that the sergeant will typically be present when the officers come by, to confirm that the commits expected are all accounted for, as they go to Corrections. Respondent admitted that as he walked by the sergeant, he did not apprise the sergeant

that he had that many prisoners not handcuffed prior to transporting them. Respondent said he was not concerned that he was transporting over eight prisoners, through three corridors without any additional personnel present.

Respondent testified that when he left the courtroom with his prisoners, Bullard was still working on paperwork with the court officers. Respondent admitted that he did not wait for Bullard to finish the paperwork prior to going downstairs. Respondent was asked why he did not wait and stated, "Well, like I said, they had always told us unless there was an evident problem, take care of your group of prisoners and get to your meal relief post." Respondent continued by stating that he was not present when Bullard transported his prisoners, and could not testify, as to whether Bullard's prisoners were handcuffed or not. Respondent conceded that he has on occasion had a problem with a special prisoner. Respondent explained what the problem usually entailed "Well, they would become either belligerent with a prisoner sitting next to them or sometimes they get belligerent with the judge if they didn't agree with what the judge was saying."

Respondent admitted at one point he became aware that the special prisoner was missing. Respondent elaborated that the sergeant approached him, while Respondent was at his meal relief post. Respondent explained how the conversation unfolded "While I was already on my meal relief post doing the prisoner intake, the sergeant came and asked me where Officer Bullard was. And I told him, I said I was assuming that he was upstairs with the females, as he had two females and the rest were male prisoners. So at that the male prisoners go to the commit area in the first hallway, but the females get taken up. There is a level above us where the intake area is. So I was assuming that he was there, but the sergeant told me that he hadn't walked past the area yet. I said 'You

know' – so at that point I had been sitting on my post maybe about 20 minutes or so." At that point Respondent was directed by the sergeant to look for Bullard, while the sergeant stayed at Respondent's post.

Respondent testified that he was heading back towards the direction of the courtroom, when he passed the commit area and looked down. That is when he saw Bullard with two female prisoners and four male prisoners. Respondent stated that Bullard explained there was a problem with the paperwork, and that was holding up Corrections processing the prisoners. Respondent explained what he told Bullard to do "Listen, since they already got the process going, take the two females and I'll stay here with the guys until they get lodged, that way, you know, you can get to your post because the sergeant is complaining." Respondent said at that point Bullard left with the two females, and Corrections took the four male prisoners that were there. Respondent admitted that he assumed one of the male prisoners had already gone through, because Respondent was told by Bullard that the lodging process had begun. Respondent said after the four prisoners were lodged, one of the Corrections officers came up to him and said, "Listen, your partner gave me five sets of paperwork, but we only have four bodies." Respondent explained at that point he knew something was wrong.

Respondent recalled at that point he double-checked the cells to make sure the special prisoner was not overlooked. Respondent saw that the special prisoner was not in the cells and went back to the felony courtroom to make sure the special prisoner was not left behind. Respondent got to the courtroom and was told by the Corrections officers who were attending to the holding cells, that the courtroom was empty. Respondent showed the Corrections officers the special prisoner's file and they recognized the

individual. One of the Correction officers told Respondent, "He went down with your partner; he was the last one on the line, and I locked the door behind him." Respondent added that the special prisoner was apparently lagging behind due to a limp.

Respondent testified he eventually was made aware that the special prisoner had escaped and was found at his home. Respondent elaborated on what he was told stating "Yeah. What I was told was that when he went downstairs – apparently I was told that he told whoever arrested him or whatever the case was that when he went downstairs and they went into the commit area, he just kept walking, and when he walked to the other end to the end of the hallway where we make the right, there's a set of stairs up there you gotta go up two flights to exit and you go through two Corrections checkpoints." At that point the special prisoner saw other officers, who turned out to be from Narcotics, transporting approximately five prisoners to the hospital. According to the Respondent, the special prisoner said he got in line with the other prisoners, put his hands behind his back, and nobody noticed anything. He was able to exit the building. Respondent recalled that the special prisoner was brought in on rape and sodomy charges.

Respondent was then questioned about the events that took place on October 31, 2010. Respondent confirmed that besides his temporary assignment to the Manhattan Court Section, he spent his career at Transit District 1, and Transit District 2. Respondent said he worked both standard and plainclothes details, while working at the Transit Districts. Respondent explained what standard patrol entailed, "It's regular patrol in the stations like patrolling train stations in uniform and answering calls like aides or other calls that come over the radio, whether it's robbery calls or, you know, people in need of assistance. It was standard." Respondent said that his plainclothes duties were different,

because he did not answer jobs unless they were addressing a crime pattern or something of that nature.

Respondent stated that his assignment on the day of October 31, 2010 was Train Patrol 1. Respondent explained exactly what that assignment entailed "... I was supposed to be at 53 Street and Lexington and take the train from that station to Queens every hour because they have two booths there that they call mega booths, and it's like a security booth. However, that day the trains weren't running," Respondent stated that he was not reassigned because the trains were not running. Instead, Coleman directed Respondent to stay at 53 and Lexington, and Coleman told Farrell to give Respondent a ride to the train station. Respondent admitted that while Farrell was driving him to the train station they received a radio call. Respondent recalled that the radio call was regarding a drunk-disorderly at 42 Street and Sixth Avenue on the stairs by Booth Nancy 503. Respondent said that he was aware the B, D, and F train lines all pulled through that station.

Respondent testified that he did respond to the call with Farrell, and that Farrell said that the train station they were responding to was his post. Respondent said he and Farrell got to the train station at approximately 8:30 a.m., and they proceeded to speak with the token booth clerk. Respondent could not confirm whether the token booth clerk they spoke with was the same person who called 911. Respondent stated that Farrell was the one who spoke to the token booth clerk, and their conversation lasted only a few seconds. At that point, the token booth clerk directed the officers to the stairwell, where the individual who was allegedly intoxicated was located. Respondent admitted that

there were some people in the train station; however, not as many as there would be on a typical weekday, because this incident took place on a Sunday morning.

Respondent testified that he and Farrell encountered the individual who was allegedly intoxicated, sitting halfway down the stairs on the left side of the stairwell. The intoxicated individual's name was Amauris Munoz, and when the two officers approached Munoz, he appeared to be resting or sleeping. Respondent admitted that he could only see Munoz from behind, but said because of the way Munoz was slumped over he believed Munoz was sleeping. Farrell was the first one to approach and talk to Munoz. Farrell explained to Munoz why they were there. At that point, a train came into the station and Farrell directed Munoz to get on the train. According to Respondent, Munoz said he was not getting on that train, and became a little agitated and belligerent with them. Respondent said another train came in, and again Munoz refused to get on the train. Respondent elaborated on what happened next, "Another train came in on the other track, and he didn't want to take that one, either. So Officer Farrell said, 'Listen, if you're not leaving, then you either gotta go' or whatever the case is. And then he stood up and he became more belligerent, and Officer Farrell kind of backed off and walked up the stairs. That's the point where I started interacting with Mr. Munoz."

Respondent testified that he was encouraging Munoz to take the train. However, Munoz seemed annoyed that the officers were questioning him. Respondent explained how Munoz acted, "Yeah. He seemed annoyed that we were talking to him or even interested in him. He was stating that 'Well, I'm not doing anything; why you bothering me?' He said something about 'I'm summa cum laude,' something like that." Respondent said that it appeared to him that Munoz was intoxicated. Respondent was

asked why he would allow Munoz to take the train by himself if he was intoxicated. Respondent replied by stating "Well, I've seen different levels of intoxication to the point where they can't even function, you know. So while we talking to him, we could tell that he's intoxicated but he's not I don't know what the term like heavily intoxicated where he can't walk or anything like that."

Respondent said at some point he got Munoz up the steps, by holding him by the arm and escorting him. Respondent explained that he escorted Munoz up the steps because Munoz was non-compliant when Respondent asked him to board the train. Respondent told Munoz that he thought Munoz should go upstairs and take a taxi home, and not ride the subway in his condition. That is when Respondent informed Munoz that he was going to grab him by the arm and guide him up the stairs.

Respondent reiterated that due to this past experience around intoxicated individuals or those who are under the influence of drugs, Respondent was on an increased alert status. Respondent was asked why he was on high alert, if he did not think Munoz was heavily intoxicated. Respondent explained "Well, from experience I know it's usually when people have something to drink they either get agitated easily or they seem to lose their inhibitions; you know, they get a little more aggressive sometimes or whatever the case is. So any time, any level of intoxication, I'm already a little bit higher on alert then because for my own safety." Respondent added that Munoz had not moved from the step prior to Respondent taking him by the arm to guide him up the stairs.

Respondent recalled that Munoz had his phone out and was taking pictures, as well as complaining that Respondent and Farrell were telling him to leave the station.

Respondent clarified that he was not sure if Munoz had actually taken a picture, only that Munoz had his phone out and was pointing it at Respondent's face and shield.

Respondent said that he did not feel very good about Munoz taking pictures of him, but also said it is Munoz's right to do so.

Respondent testified that walking Munoz up the stairs only took a few seconds, and he did not recall hearing Munoz mention that he was calling his lawyer. Respondent said he only heard Munoz claim that Respondent was harassing him, and that Munoz was saying he did not do anything wrong. Respondent added that as soon as he reached the top of the staircase, Respondent let go of Munoz's arm.

Respondent stated he was not walking with his back to Munoz as they approached the exit, but Respondent was walking at an angle. Respondent elaborated, "I walked kind of sideways at an angle so I could keep looking at him. I may have turned away at one point, but I was walking in the sense where I could -- when I stopped, I would be facing him." Respondent said during that moment in time he had no idea where Farrell was. However, Respondent said when he saw the videotape; he saw that Farrell was behind him and Munoz.

Respondent testified that he could not remember exactly what Munoz was saying as he was leading Munoz toward the exit. Respondent said he created space, faced Munoz, and told him while pointing at the emergency gate with his left hand to leave the station and take a cab. Respondent added at this point he and Munoz were approximately three to four feet away from the turnstile. Munoz was facing Respondent with his back to the stairs. Munoz did not exit after being asked to by Respondent. Instead, Munoz was pointing the phone at Respondent's face, and asking why he had to leave the station.

Respondent said at some point after Munoz came at him with his phone, he shoved Munoz into the turnstile. Respondent elaborated on what happened: "He came directly at me with the phone, and instead of walking towards the exit, he came at me at an angle walking away from the exit. And when he was right on top of me, I grabbed him, then I shoved him towards my left towards the exit."

Respondent admitted that he did not know whether Munoz was taking pictures or video with his phone, when Munoz was pointing it directly at him. Respondent testified, "At that point when I shoved him, he actually hit the turnstile and he slumped down, and when I was walking towards him, he said some sort of expletive, 'I'm going to F you up' or MF or whatever the case was. I grabbed – I grabbed him from behind, and I dragged him out through the exit gate, yeah." Respondent said he tossed Munoz because he felt threatened, and was unsure how Munoz would react given the fact that he was previously non-compliant. Respondent elaborated that he grabbed Munoz around the chest/collar area of his jacket and tossed him towards his left towards the exit.

Respondent testified that immediately after Munoz hit the turnstile and fell to the floor, Respondent approached him. Respondent said he wanted to move Munoz to an area where it would have been easier to handcuff Munoz. At the time, Munoz was sitting with his back against the turnstile, because Munoz fell in a seated position. Respondent admitted that at that time Munoz did not try to get up; however, there came a point when he did stand up. Respondent explained how it unfolded "Not until after when I dragged him out through the gate and I put him down the first time to try to cuff him, he tried to get up and crawl away. He ended up crawling around the bend because when you come out the gate there's maybe a few feet of gate and then there's an opening that you can go

around. The gate continues around to the right, and he crawled around that point. So when I followed him there and I was trying to cuff him, at that point he stood straight up."

Respondent admitted that after Munoz fell by the turnstile he did not notice if Munoz had sustained any injuries. Respondent agreed that an officer can handcuff an individual when the officer is executing an arrest or when they feel that individual is a threat. Respondent was asked why he did not handcuff Munoz immediately after tossing him to his left into the turnstile. Respondent replied that he wanted to get Munoz out of that area, and somewhere Respondent could get Munoz on his stomach to control him more. Respondent admitted that he could not say whether anyone was standing around and watching, but he did say no one tried to interfere during his altercation with Munoz.

Respondent was asked how he brought Munoz from the turnstile area through the gate. Respondent explained how he moved Munoz stating, "I grabbed him. I turned him sideways from the seated position that he was in, and I grabbed him, like, underneath the shoulders; and I dragged him out this way, like, backing up through the gate."

Respondent said that he could not remember whether he dropped Munoz or put him down after bringing him through the gate and prior to turning him on his stomach. Respondent did not remember tossing Munoz a second time after bringing him through the gate, and said they were approximately two feet away from the gate when Respondent put Munoz down. After he put Munoz down a second time, Respondent tried to handcuff Munoz. Respondent explained what happened after he put Munoz down "At that point I kneeled down and I tried to handcuff him. And he kept trying to push up, and he managed to, like, crawl around the bend."

Respondent testified that after shimmying after Munoz for a few seconds, Respondent was going down to grab Munoz, and that is when Munoz stood. At that point, Respondent said he grabbed him and tossed him to the ground. Respondent could not recall if he used the terminology "hip toss" in his previous testimony, but said he did admit to grabbing Munoz again and bringing him to the floor. Respondent elaborated on how he grabbed Munoz stating, "I don't remember if I said a hip toss, but I know I grabbed him like this. And you try to lift him a little bit or just take him off balance so you can put him straight down to the floor with his stomach down. Like I said, the idea is to try and keep his back to you so he can't throw punches, and you gotta handcuff him behind the back."

Respondent testified that he took part in an official Department interview conducted by the Internal Affairs Bureau (IAB) regarding this incident. Respondent did not recall indicating during his interview that the second time he grabbed Munoz, Respondent fell to the floor with him. Additionally, Respondent could not remember the day he was interviewed, and testified that he did not have anything with him that would refresh his recollection.

Respondent testified that as he sat in the courtroom he did not remember falling on top of Munoz. Respondent admitted that he must have told the investigators he did because it was written down in the transcript of his interview, although he does not remember that happening. Respondent reiterated that at some point he got handcuffs on Munoz after he had to put him back on the floor a second time. Respondent elaborated on how he was able to handcuff Munoz "... I used what I was trained like years ago, it was called a shin-ear suppression. It was usually – you press – when they down on the

floor and their head is sideways, you put your shin right on top of their ear, you put pressure because it prevents them from lifting their head and turning their body."

Respondent said he had to use the shin-ear suppression on Munoz because he was trying to get up, and once applied Munoz was unable to get up anymore. Respondent could not recall what, if anything, Munoz was saying once Respondent put him in a shin-ear suppression hold.

Respondent testified that eventually he got Munoz in handcuffs and he searched Munoz's pockets. At that point, Respondent said he noticed Munoz was bleeding, and that Respondent had blood on him. Respondent admitted that Munoz was bleeding a lot and had a laceration on his lower lip. Respondent stated that he did not notice any other injuries Munoz may have had. Respondent conceded that after Munoz had hit the turnstile and fell to the floor, Respondent did not inspect him for injuries at that point.

Respondent was shown DX 2 in evidence, (a compact disk with four video shots provided by the MTA.) Respondent was able to identify Munoz in the video by his hair, and Respondent used the video to state where he was in relation to Munoz. After reviewing the video in evidence, Respondent clarified his testimony, stating he must have been mistaken about Munoz standing up. Respondent was asked after reviewing the video at what point between the time Munoz fell and was then handcuffed did he stand up. Respondent replied by stating "I guess he didn't. I thought he stood up at one point." Upon being questioned whether Munoz sat up or not prior to Respondent picking him up off the floor, Respondent replied, "I guess I thought he had fallen in a seated position."

Respondent approximated that he was four maybe five feet away from the turnstiles when he tossed Munoz in that direction. Respondent was asked if he noticed

the turnstiles that were feet away from him prior to tossing Munoz in that direction. Respondent replied by stating that it was not his intent for Munoz to hit the turnstile that hard. Respondent explained, "I wanted to get him in that direction, but I didn't know he was going to hit – at first I didn't know he was going to go that hard, and it definitely wasn't my intention for him to strike his head."

Respondent testified that Munoz was coming at him at an angle, which left Munoz directly opposite a staircase. Respondent reiterated that pushing Munoz back as he was coming at Respondent may have caused Munoz to fall down the stairs directly behind him. Respondent testified that Munoz was coming at him from his right side at an angle, which would have made it much harder to throw Munoz to the right side, away from both the turnstile and the stairs behind Munoz. Respondent stated that throwing Munoz in that direction would have been too difficult given the circumstances. Respondent elaborated by stating, "At the angle that I was in, it would have been hard for me to do that because I wouldn't have, like, no leverage, plus I'm a lefty. I usually toss towards my left."

Respondent clarified his previous testimony stating that Munoz did not reach inside his pocket, but that Munoz's hand was near his jacket pocket. Respondent explained why he was suspicious of Munoz's movements stating, "There was a couple of instances on the stairway where he was, you know, fidgeting with his pockets, and at one point I even grabbed the outside of his jacket to make sure if there was anything in there."

Upon further questioning by the Court, Respondent reiterated that Munoz was sitting about halfway down the staircase, to the left side, when Respondent first approached him. Respondent stated that he was approximately 5'10 and a half, and

weighed two-hundred and fifteen to two hundred and twenty pounds on the day of the incident. Respondent approximated that Munoz was 5'8 and one-hundred and seventy five to one-hundred and eighty pounds on the day of the incident. Respondent admitted that when he first encountered Munoz, he was not stumbling or anything like that. Respondent added that while he was directing Munoz to the exit, Munoz was complaining about why he was stopped, and that he was doing nothing wrong.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2011-5751
Specification No. 1

Respondent stands charged herein in that while assigned to the Manhattan Court Section, while on-duty, on or about September 14, 2011, in the vicinity of the Manhattan Court Section, in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer failed to safeguard a prisoner, Person A, resulting in the escape of said prisoner.

Respondent pleaded Guilty to this Charge. Respondent testified that he was trained in the following: "And so the way I was taught to do it was unless there was a prisoner that posed some sort of threat or whatever, one transporter would take the second call of prisoners down which were the ones that didn't get to see the judge that night, and the other transporter would take down the commits who were going to be turned over to Corrections." On this particular night, Respondent acknowledged that there was one prisoner whom he was aware of who was deemed "special." Respondent stated that the term is used for prisoners who are emotionally disturbed. In this instance, the prisoner was a rape suspect. This means that Respondent and his partner, another

transporter of prisoners, should have been working together to move the prisoners through the courthouse. However, Respondent testified that he transported 12 second call prisoners to their lodging solo and proceeded to his meal relief post while the other transporter had seven prisoners.

When the sergeant came looking for Respondent's partner, Respondent informed the sergeant that he did not know where his partner was. The sergeant instructed him to find him. Respondent found his partner with the prisoners at the male commit area. Respondent told his partner that he would lodge the prisoners and for him to go to see the sergeant who was looking for him. Respondent noted that his partner had four male prisoners and two females to be lodged at that time. He waited for Corrections to lodge the male prisoners. After Corrections lodged the four prisoners, Corrections informed Respondent that they had paperwork for five males but only four "bodies." Respondent reviewed the paperwork and realized that the "special" prisoner was missing. Respondent went back to the felony courtroom to see if the prisoner was left behind in error. Respondent was informed that the special had left the court room with his partner. A search of the courthouse yielded negative results. The prisoner was later found at home. Respondent acknowledged that he lost 14 pre trial suspension days as a result of this matter.

Accordingly, Respondent having pleaded Guilty to this Charge is found Guilty of Specification No. 1.

Disciplinary Case No. 2012-7176
Specification No. 1

Respondent stands charged herein in that while assigned to Transit Bureau District 1, on or about October 31, 2010, at the 42 Street and Sixth Avenue Subway Station in New York County, pushed an individual causing said individual to hit his head on the ground.

Evidence adduced at trial established that on October 31, 2010, Respondent and Police Officer Farrell responded to the Sixth Avenue subway station at 42 Street after Farrell received a call regarding an intoxicated male at the subway station. At the time, Respondent was supposed to be transported to his assignment, but he agreed that he would accompany Farrell to the job. When they arrived at the station, they found Munoz sitting halfway down on a staircase near the left side of a rail and he appeared to be asleep. Respondent said Farrell spoke to Munoz. He explained to him that he was sleeping on the staircase and asked if everything was alright. Munoz questioned what the problem was and Farrell told him that he needed to get on the train and go home.

Respondent testified that he could smell alcohol on Munoz. He said he had blood shot eyes and slurred speech. When the first train came, Munoz refused to get on it claiming that it was the wrong train. When the second train came, Respondent said that Munoz refused to get on that one, stating that he did not have to do anything and became disruptive. Respondent said his partner Farrell at that point, walked up the stairs and left Respondent alone with Munoz. Respondent recommended to Munoz to go upstairs and take a taxi home. Respondent then grabbed Munoz by the arm to help him up the stairs and out of the train station. Respondent said that Munoz pulled away and told him to get off of him. Once at the top of the stairs, Respondent released Munoz. Respondent

recalled that during the time he was escorting Munoz up the stairs, Munoz was taking pictures of him with his cell phone, but Respondent was not troubled by it.

Respondent said once at the top of the stairs, he faced Munoz and pointed toward the turnstile exit to his left directing him to leave the station. He said he kept a few feet of distance between them and told Munoz words to the effect, "Catch a cab or do what you have to do to go home." Munoz instead raised his phone and pointed it at Respondent's chest and face. Respondent said he did not move until Munoz got within two inches of him. At that point he grabbed Munoz and tossed him to his left. Munoz struck the turnstile and slid down to the floor. Respondent explained that he did not intend for Munoz to strike the turnstile. He said he could not push Munoz away from him because Munoz was too close to the steps and could have fallen down the steps. Respondent noted that once he had to grab Munoz, it was an arrest situation.

As Munoz attempted to get up, Respondent grabbed him under the armpits and dragged him through the emergency gate. Once they cleared the gate, he tossed him to the side a second time. Respondent knelt down to handcuff Munoz, but he could not. Munoz stood up at one point and Respondent testified that he "hip tossed" Munoz which caused Munoz to land on the floor on his side. Respondent was then able to turn Munoz onto his stomach and handcuff him. Respondent explained that at one point while on the floor, Munoz tried to resist arrest by placing his hands underneath his body. Respondent said he used a technique learned in the Police Academy called "shin suppression" where he put pressure on one of Munoz's ears and head by pinning it against the floor with his shin. This prevented Munoz from being able to move and Respondent was able to handcuff him.

Respondent's interaction with Munoz was captured in varying degrees by the video cameras located in the subway station and saved to a compact disc (CD) (DX 2). In the CD described as "Altmann 1," at a time of 8:26:59 a.m., Respondent and Farrell are seen using the service entrance door to enter the train station. Three minutes and 41 seconds into the video, off to the left, Respondent is seen walking Munoz up the subway station stairs to the area near the turnstiles. Farrell walks ahead and provides no assistance whatsoever. Once up the stairs, Respondent points with his left hand to the exit. Munoz points his cell phone in the direction of Respondent's face and Respondent immediately does a twist and turn, grabs Munoz and throws him into the turnstile area as Respondent's partner watches. Munoz falls to the ground. After picking Munoz up from the floor, Respondent drags Munoz through the service exit and throws him to the floor, causing Munoz's cell phone to fall the ground. Munoz lands on the floor face down. Farrell is seen picking up the cell phone, but again takes no action to assist his partner or Munoz.

Munoz appears to attempt to get up but Respondent forcibly keeps him down, flips him over to his stomach and handcuffs him. Within five minutes of entering the subway station, Respondent is removing a handcuffed Munoz from the station. Video "Altmann 2," Respondent and Farrell are seen entering the subway station through the service entrance (rear view). "Altmann 3," Respondent and Farrell are seen entering the station via a frontal view. Three minutes and 35 seconds into the video, Respondent is seen from a rear view angle pointing to the turnstile exit with his left hand. Within seconds he then grabs Munoz and throws him into the turnstile area. Respondent then picks Munoz up from the floor and drags him through the service exit door and throws

Munoz on the floor, causing Munoz's cell phone to fall to the floor. Munoz appears to try to stand up, but Respondent tossed him to the floor on his stomach, handcuffed Munoz behind his back, and removed him from the subway station.

Three minutes and five seconds into the same video, there is another view of Respondent throwing Munoz into the turnstile area. It is a clear view where one can see Munoz's head, particularly his face, hitting the upper right metal side of the turnstile area and then his head bounced quickly from the right side of his face to the left side of his face onto the lower side of the metal turnstile casing before Munoz hit the floor. Off to the right corner of the video, one can see Respondent toss Munoz to the ground and handcuff him as his partner looks on.

There never appears to be a point from all of the various security camera angles that Respondent appears to be threatened by the proximity to which Munoz gets into his space to take cell phone pictures. Once Munoz flipped his phone to take a picture of Respondent near the turnstiles, Respondent immediately swung around and picked up Munoz and threw him into the turnstiles. There was no where else for Munoz to go but into the turnstiles and Respondent appeared to intend for that to happen. The force used caused Munoz to hit his head on the metal side of the turnstile and his head bounced off of the metal sides in a rapid succession.

Respondent is charged with pushing Munoz to the ground causing him to hit his head. However, Respondent in fact flung Munoz such that he hit his head on the sides of the metal turnstile. Complainant suffered a gash to his lip and chin which is exhibited in the three pages of photograph (DX 1). Munoz testified that he had to have surgery as a

result of the injuries he sustained.

Accordingly, Respondent is found Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of failing to safeguard a prisoner and pushing an individual causing his head to hit the turnstiles and subsequently the ground. With respect to the lost prisoner case, the Court does not find any mitigating factors. Respondent had a duty to transport prisoners in the courthouse on a daisy chain or handcuffed. Particularly where a prisoner was considered "special" who was not held in the holding pens amongst other prisoners. That was the prisoner who ended up escaping. That prisoner was a rape suspect who was later found at home. Respondent and his partner should have been transporting the prisoners together. Failure to do so allowed the special prisoner to literally walk out of the court house and put the entire court house and its personnel at risk. It was learned that the escaped prisoner did not engage in any further criminal activity during the time out of custody.

The second instance of Respondent's misconduct was caught on video. Despite Respondent's testimony that he was threatened by Munoz, the video captured that Respondent was bigger and towered over Munoz as they had their interaction. Munoz

may have been making verbal comments to Respondent which was not obvious on the video which lacked a sound component. If Munoz was intoxicated as Respondent claimed, Respondent should have exercised more self control in dealing with him and Respondent's use of the amount of force to throw Munoz at least two times was unnecessary and excessive, particularly where an intoxicated person would be unable to protect himself from injury. Munoz appeared to be taking pictures of Respondent on his phone and this may have angered Respondent; or the fact that Munoz failed to voluntarily exit the train station.

The Assistant Department Advocate asked for a penalty of forfeiture of 14 suspension days already served by Respondent pretrial for the loss of the prisoner. In addition, the Department asked for a penalty of the forfeiture of 11 vacation days for the use of force. The force was throwing Munoz down at least twice, once resulting in his head coming in what appeared to be hard contact with the turnstile; and the second time after being dragged through the gate, Munoz being thrown to the platform floor hitting it face first. Although Respondent argued that his use of force was justified, the video does not support this claim. The Court acknowledges that on the incident date Respondent's partner provided no assistance whatsoever in addressing the situation with Munoz; however, Respondent's over reaction was not justified. There appears to be no reason why Respondent could not have simply walked Munoz out of the train station.

The Court finds that the repeated use of force without justification and the penalty recommendation with respect to the force to be woefully inadequate given what can be seen on the video. Accordingly, it is recommended that Respondent forfeit the 14 days

time served on pretrial suspension for the loss of prisoner. In addition, it is recommended that he forfeit 26 suspension days for a total penalty of 40 suspension days.

Respectfully submitted,

Claudia Daniels DePeyster
by *Melinda Z. C.*
Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials

APPROVED

Raymond W. Kelly
NOV 25 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ERIC RODRIGUEZ
TAX REGISTRY NO. 911794
DISCIPLINARY CASE NOS. 2011-5751 & 2012-7176

In 2010, Respondent received an overall rating of 3.0 “Competent” on his annual performance evaluation. In 2011 and 2012, he received a rating of 3.5 “Above Competent.” Respondent has received one Excellent Police Duty Medal in his career to date.

[REDACTED]

[REDACTED]

[REDACTED]

Respondent was suspended for 14 days, placed on Modified Assignment from September 28, 2011 until August 14, 2013 following his suspension in this matter. Respondent has no prior formal disciplinary record.

For your consideration.

Claudia Daniels DePeyster
by *[Signature]*
Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials